



*Serving the Iowa Legislature*

# IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

May 26, 2016

2016 Interim No. 1

## In This Edition

<b>Calendar .....</b>	<b>1</b>
<b>Agenda .....</b>	<b>2</b>
<b>Briefings .....</b>	<b>3</b>
• Administrative Rules Review Committee (5/10/16)	
<b>Legal Updates.....</b>	<b>5</b>
• Urban Renewal Tax Increment Financing	

## May 2016

Su	Mo	Tu	We	Th	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## June 2016

Su	Mo	Tue	We	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Tuesday, June 14, 2016

**Administrative Rules Review Committee**  
9:00 a.m., Room 116, Statehouse

*Iowa Legislative Interim Calendar and Briefing* is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

# AGENDAS

## INFORMATION REGARDING SCHEDULED MEETINGS

---

Chairperson: Senator Wally Horn

Vice-Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Tuesday, June 14, 2016, 9:00 a.m.

Contact Persons: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Agenda: Published in the Iowa Administrative Bulletin:

<https://www.legis.iowa.gov/IowaLaw/AdminCode/bulletinSupplementListing.aspx>

Internet Site: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

---

### ADMINISTRATIVE RULES REVIEW COMMITTEE

May 10, 2016

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

#### **HUMAN SERVICES DEPARTMENT, *Habilitation and Brain Injury and Intellectual Disability Waiver Programs—Prevocational and Supported Employment Services*, 3/30/16 IAB, ARC 2471C, SPECIAL REVIEW.**

**Background.** These adopted rules were reviewed by the committee at its April 2016 meeting and became effective May 4, 2016. The committee's review of this rulemaking began with a review of the Notice of Intended Action at its September 2015 meeting. Since then, committee members have expressed concern regarding the department's use of \$750,000 of the amount appropriated for the state's Medicaid program in 2015 Iowa Acts, SF 505, section 12. Language stating that those funds were to be used to increase supported employment rates, which was included in earlier drafts of the bill and in the final Notes on Bills and Amendments (NOBA) for the bill, was erroneously omitted from the final text of the bill. Due to that omission, the department used those funds for purposes of addressing a Medicaid funding shortfall. Committee members questioned whether the department should instead have used those funds as directed in the omitted language. A special review of ARC 2471C was held for purposes of discussing this issue further.

**Commentary.** The department was represented by Department Director Chuck Palmer, as well as Ms. Nancy Freudenberg and Ms. Deb Johnson.

Committee members asked Director Palmer to explain when he became aware of the omission of the language from SF 505. He explained that he became aware of the omission after the bill was signed by the Governor. He acknowledged receiving a letter from the co-chairpersons of the joint appropriations subcommittee on Health and Human Services explaining the omission and urging the department to implement the omitted language. He stated that he found no direction regarding a funding increase for supported employment in the bill itself. He then explained that such an increase in funding could be implemented in multiple ways, but the bill offered no guidance as to how such an increase should be implemented. As an example, he cited a question of whether such a funding increase should be implemented in a budget-neutral manner. He explained that he was concerned about exceeding the department's legal authority given the lack of guidance in the bill. Given that uncertainty, he said he chose to use the funds at issue for purposes of addressing a Medicaid funding shortfall instead.

Committee members questioned whether the resulting reduced funding for supported employment caused a loss of federal matching funds. Director Palmer explained that, due to the way funds were allocated in SF 505 and 2016 Iowa Acts, HF 2460, no federal funding was lost. Committee members questioned whether this conclusion was correct.

Committee members asked if additional funding, guidance, or other provisions relating to this issue were included in HF 2460. Further discussion led to the conclusion that while additional funding was included in earlier versions of HF 2460, this issue was not addressed in the final bill.

Committee members asked if Managed Care Organizations (MCOs) are responsible for supported employment. Director Palmer stated that they are. Committee members asked him to provide the committee with information on whether supported employment providers have signed up with MCOs, and he agreed to do so.

Committee members asked when the department had last had an independent audit. Director Palmer explained that the department is audited by the Auditor of State each year, and the federal government regularly audits department programs when federal funding is involved, but no nongovernmental audit has occurred.

Additional discussion regarded how agencies can discern legislative intent. Committee members suggested that including more legislative intent in the text of bills may be appropriate. Director Palmer stated that in his experience, situations similar to the omitted language in SF 505 are rare.

**Action.** No action taken.

#### **HUMAN SERVICES DEPARTMENT, *Record Check Evaluations for Certain Employers and Educational Training Programs—Deferred Judgment*, 4/27/16 IAB, ARC 2504C, NOTICE.**

**Background.** This rulemaking adds a definition of "deferred judgment" to the department's rules on record checks and specifies that deferred judgments will be considered in criminal background checks. The rules apply to personnel employed by health care facilities and other programs and for students in educational training programs for nurses and certified nurse aides.

# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

---

*(Administrative Rules Review Committee continued from page 3)*

The rulemaking states that “deferred judgment” means the same as defined in Iowa Code section 907.1 and is considered an admission of committing an act. The rulemaking further states that the admission of committing an act must be considered a conviction for purposes of public protection.

**Commentary.** Department representative Ms. Nancy Freudenberg explained that this proposed rule codifies existing practice and that such codification is intended to help attorneys and judges advise defendants regarding the possible consequences of deferred judgments. She stated that by considering deferred judgments to be convictions, the department is complying with statutory requirements. She distributed copies of an Iowa Supreme Court decision on the subject.

Committee members asked what criteria the department had developed regarding how it would consider a deferred judgment during a background check and whether the department’s analysis would vary depending on the crime involved. Ms. Freudenberg explained that the department has criteria in place for such analysis and that certain felonies would automatically result in a failed background check. Committee members asked Ms. Freudenberg to provide the committee with additional information regarding the criteria, and she agreed to do so.

Public comment was heard from Ms. Toya Johnson of Iowa Citizens for Justice who stated that treating deferred judgments as convictions unfairly punishes people for past mistakes and disproportionately affects African Americans. Additional public comment expressing concern regarding the rulemaking was also received.

**Action.** No action taken.

### **EDUCATION DEPARTMENT, *Preschool Funding*, SPECIAL REVIEW.**

**Background.** The committee held a special review of three subrules of the Department of Education: 281-16.3(10), and 281-98.76(2) and (3). The subrules concern permissible uses of funding for the statewide voluntary preschool program.

**Commentary.** Department representatives Mr. Jeff Berger and Ms. Nicole Proesch explained the department’s categorical funding methodology for the statewide voluntary preschool program. Mr. Berger stated that while individual providers may vary in how they define their costs, funding decisions by the department are based on statutory requirements and supplemented by generally accepted accounting principles. Mr. Berger noted that under Dillon’s Rule, costs that are not specifically listed as eligible for funding are ineligible for funding. He also stated that changes to specific categories of funding would require legislative action.

Public comment was heard from Ms. Carol Earnhardt and Ms. Deb Gustafson on behalf of YMCA Child Care and Family Services in Scott County, Iowa, which participates in the statewide voluntary preschool program. They distributed copies of the department’s handbook on standards for the program. They explained that the standards require providers to assist children with activities such as toileting and washing hands and to engage in other activities for which sanitary products are necessary. They stated that their annual costs for such products have been about \$800, which is currently categorized as an administrative expense. They explained that administrative expenses are subject to a cap, and therefore they do not receive sufficient funding to fully cover those costs. They asserted that such costs should be considered direct costs, which are eligible for full funding, because they are part of the required standards for the program.

Mr. Berger agreed that the costs at issue have been considered administrative costs by the department. He said he was willing to discuss the matter further with the commenters. Committee members urged the department to develop clearer standards regarding appropriate and inappropriate costs for the program.

**Action.** No action taken.

### **IOWA FINANCE AUTHORITY, *Title Guaranty Division*, 4/27/16 IAB, ARC 2506C, ADOPTED.**

**Background.** This rulemaking strikes and rewrites the Iowa Finance Authority’s rules for its Title Guaranty Division. The division’s rules are reorganized, updated, and aligned with statutory authority and current practice. The process for obtaining a title plant waiver is revised. The division prepared a regulatory analysis of this rulemaking in response to a request from the Iowa Land Title Association (ILTA) pursuant to Iowa Code section 17A.4A, which was published in the November 25, 2015, Administrative Bulletin.

The authority made a variety of changes to the noticed language in response to public comments, including adding a definition of abstractor, changes in terminology, and changes to criteria for granting a title plant waiver.

**Commentary.** Authority representative Mr. Mark Thompson reviewed the history of the Title Guaranty Division, noting that it serves as a substitute for title insurance, which is illegal in Iowa but permitted in the other 49 states. He also

# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

---

*(Administrative Rules Review Committee continued from page 4)*

explained the history of the division's 40-year title plant requirements, which were statutorily created in 1992 and which are revised in this rulemaking. He then explained the history of the division's statutory criteria for waiving the 40-year title plant requirements, which were the subject of a decision by the Iowa Supreme Court in 2009 known as the Hendricks case. He explained that this rulemaking includes the division's interpretation of the requirements of that case and acknowledged that ILTA has disagreed with that interpretation. He noted that the division placed a moratorium on all title plant waivers in 2014 in light of questions raised regarding the waiver process.

Committee members questioned whether the definition of "abstractor" in the rules is too broad because it includes corporate entities as well as individuals. Mr. Thompson explained that the definition is based on a legal definition used elsewhere and that there are no individual abstractors, only corporate ones.

Committee members had various questions regarding the rules for title plant waivers, particularly the definition of "hardship." Mr. Thompson expressed openness to discussion of some possible changes regarding title plant waivers, but stated that the division feels that the definition of "hardship" is limited by the Hendricks decision. Additional discussion occurred regarding the Hendricks case and title plant waivers. Mr. Thompson was joined in this discussion by Division Director Ms. Tara Lawrence.

Public comment was heard from Mr. Andrew Nordstrom, president of ILTA. He praised the division for its work in re-writing these rules and for working with ILTA during the rulemaking process. He noted improvements that had been made to the rules. He then expressed concern with the definition of "abstractor" due to its inclusion of corporate entities. He also expressed concern regarding the title plant waiver criteria. He stated that ILTA disagrees with the division's interpretation of the Hendricks case and feels the waiver criteria could be further clarified.

**Action.** A motion for a Session Delay on ARC 2506C passed by a nine-to-one vote (seven votes required to pass).

**Next meeting.** The next committee meeting will be held in Room 116, Statehouse, on Tuesday, June 14, 2016, beginning at 9:00 a.m.

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

*LSA Staff:* Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Site: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

## LEGAL UPDATES

**Purpose.** Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other interested persons of legislative issues that are the subject of state court and federal district court decisions and regulatory actions, United States Supreme Court decisions, and Attorney General Opinions, including issues involving the constitutionality and interpretation of statutes adopted by the General Assembly. Although a briefing may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.

### LEGAL UPDATE— URBAN RENEWAL TAX INCREMENT FINANCING

Filed by the Iowa Supreme Court

April 22, 2016

**Concerned Citizens of Southeast Polk School District v. City of Pleasant Hill**

**No. 14-1362**

[http://www.iowacourts.gov/About\\_the\\_Courts/Supreme\\_Court/Supreme\\_Court\\_Opinions/Recent\\_Opinions/20160422/14-1362.pdf](http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20160422/14-1362.pdf)

**Background and Procedure.** In 1994, the Pleasant Hill City Council (City) established an urban renewal area (URA) commonly referred to as the "Copper Creek URA" and an urban renewal plan (Plan) for the Copper Creek URA. The Plan generally provided it would remain in effect for 20 years. The City also passed an ordinance for tax increment financing (TIF) purposes within the Copper Creek URA. In 1995, the City created a second URA known as the "Industrial URA," and simultaneously passed an ordinance for TIF purposes in the Industrial URA. In 2000, the City created a third URA, known as the "East URA" with a corresponding TIF ordinance. In 2006, the City consolidated the Industrial URA and the East URA into the Copper Creek URA, which had been renamed the Pleasant Hill URA.

# LEGAL UPDATES

---

*(Legal Update—Urban Renewal Tax Increment Financing continued from Page 5)*

Additionally, the Plan was amended to cover the consolidation and some property that had not previously been covered by any of the three URAs was added to the newly consolidated Pleasant Hill URA. The consolidated Pleasant Hill URA, like its predecessors, was an economic development area, not a slum or blighted area. In June 2013, the City annexed 238 acres on the east edge of the City and by resolution established a new economic development URA largely consisting of the newly annexed property. Additionally, the City amended the consolidated Plan to incorporate the just-created URA into the existing Pleasant Hill URA (Amended Plan). In addition to specifications for the types of projects to be completed on the newly annexed property, the Amended Plan purported to extend the life of the original Copper Creek URA for 20 more years. The City's intention was to use TIF revenue from the old Copper Creek URA to subsidize the street improvements and other infrastructure in the newly added areas of the consolidated Pleasant Hill URA.

On July 22, 2013, Concerned Citizens of Southeast Polk School District (Concerned Citizens), a nonprofit entity comprised of residents of the Southeast Polk School District, filed a petition for a writ of certiorari and for a declaratory judgment and an injunction to prevent both the annexation and the Amended Plan from taking effect. The City filed a motion for summary judgment on three issues: (1) the 2013 resolution illegally extended the Copper Creek URA for an additional 20 years; (2) the 2013 resolution unlawfully allowed TIF funds from the original Copper Creek URA to support projects outside that URA; and (3) the resolution failed to conform with the City's 2005 Comprehensive Development Plan (Comprehensive Development Plan). The district court granted the City summary judgment on the first issue. The district court reasoned that because the Copper Creek URA was established before January 1, 1995, it was not subject to the 20-year statutory sunset in the Iowa Code. The district court also granted summary judgment to the City on the issue of whether TIF revenues from the original Copper Creek URA could be used outside that URA. Finding genuine issues of material fact, the district court denied summary judgment on the third issue of whether the June 2013 resolution conformed with the Comprehensive Development Plan. However, after conducting a trial the following month, the district court found that the City had not violated its own Comprehensive Development Plan. Both Concerned Citizens and the intervenor, Southeast Polk School District, appealed. The Court of Appeals affirmed, generally agreeing with the district court's analysis. The Iowa Supreme Court (Court) granted further review.

**Issues.** Concerned Citizens claim the Amended Plan violates Iowa law because it unlawfully extends the duration of a TIF area, unlawfully uses revenue from that TIF area to support development in other parts of the City, and fails to conform to the terms of the Comprehensive Development Plan.

**Arguments and Analysis.**

**Copper Creek URA Extension.** Iowa Code section 403.17(10) limits a TIF division of property tax revenue based upon an economic development determination to 20 years. This duration limit was added in 1994 and specifically applies to urban renewal plans approved on or after January 1, 1995. Concerned Citizens asserted that the use of the word "plans" in that provision means that once a plan was amended, particularly when the amendment involved the consolidation of various URAs, any grandfathering ended and the 20-year limit applies. Conversely, the City argued that because the 1994 legislation only required that the plan have been approved before January 1, 1995, and because Iowa Code section 403.5 expressly permits the modification of plans after they have been approved, the pre-amendment existence of the plan is what matters and the plan can later be amended without affecting the grandfathered status of any URA utilizing a TIF arrangement that was established before 1995. An even more assertive oral argument was made by the City that would allow a city to amend a plan to subject more territory to a TIF arrangement and thereby avoid the 20-year limit within any of the territory, if the original plan had been approved before 1995. The Court noted the City's logical concession in its written brief on this issue that such an interpretation "would violate the law" if the TIF allocation were extended beyond the 20-year limit in any part of the Pleasant Hill URA other than the original Copper Creek URA.

The Court reasoned that because an urban renewal plan cannot exist without a URA, the sunset provision is tied to a URA. Consequently, if the sunset provision is tied to a URA, the Court found it is reasonable that the grandfathering exception would also be tied to a URA, and in this case the specific territory of the URA approved before 1995. The Court also noted a clear intent to grandfather existing URAs, as opposed to grandfathering all URAs set up by a municipality just because the municipality had approved one economic development urban renewal project before the deadline. The Court further supported this conclusion by noting that the Legislature did not construct the 20-year limit to take effect immediately but gave municipalities until January 1, 1995, to operate under the old law.

The Court also analyzed the Copper Creek URA's extension in light of the City's use of TIF property tax revenues within the newly consolidated URA. Iowa law does not prohibit a municipality from combining tax revenues within

# LEGAL UPDATES

---

*(Legal Update—Urban Renewal Tax Increment Financing continued from Page 6)*

the combined URA to fund a new project. Such a practice was upheld in *Fults v. City of Coralville*, 666 N.W.2d 548 (Iowa 2003). However, once the City consolidated URAs, the original Copper Creek URA no longer existed. According to the Court, the City's 2006 action was not a mere formality but had the desired legal effect of allowing the City to use TIF revenue from the Copper Creek URA outside the boundaries of the Copper Creek URA. The Court also dismissed the City's attempt to argue how a URA can cease to exist as a separate area for TIF revenue sharing purposes and yet have its life extended seven years later as a separate area for grandfathering purposes. The Court found no basis in Iowa Code chapter 403 that would allow a URA to both continue as it was and be consolidated at the same time. Accordingly, the Court held that the City could not by adoption of the 2013 Amended Plan legally extend the June 1994 version of a URA that no longer existed.

**Use of TIF Revenues Outside of Copper Creek URA.** The Court relied on *Fults* to conclude that the City is authorized to use TIF revenue from the old Copper Creek URA to fund street improvements and construction and other aspects of economic development outside the Copper Creek URA boundaries following the consolidation of the various URAs.

**Compliance with Comprehensive Development Plan.** Iowa Code chapter 403 requires that an urban renewal plan conform to the general plan for the municipality as a whole. In this case, the City's general plan is its Comprehensive Development Plan. Concerned Citizens argued that the Amended Plan was inconsistent with the Comprehensive Development Plan. According to Concerned Citizens, the City's 2013 Amended Plan contemplated a light industrial warehouse development with related street improvements and construction, whereas the Comprehensive Development Plan provided for commercial use in the same area and did not mention several of the planned street improvements and construction. The Court found Concerned Citizens' argument analogous to the Court's previous decision in *McMurray v. City Council of the City of West Des Moines*, 642 N.W.2d 273 (Iowa 2002). Ultimately, the Court found that the lack of inclusion or specificity of certain projects in the Comprehensive Development Plan and the inclusion of such projects in the City's 2013 Amended Plan did not create a direct inconsistency in the plans.

**Holding.** The Court vacated the decision of the Court of Appeals, and affirmed the district court in part, reversed it in part, and remanded for further proceedings. The Court concluded that extending the duration of the Copper Creek URA TIF was impermissible because that area had previously been consolidated with other TIF areas and therefore no longer existed. The Court also held that revenue may be shared within the consolidated, larger TIF area subject to the time limits set forth in the 1994 Iowa law, and that the Amended Plan and the Comprehensive Development Plan were not inconsistent with each other.

*LSA Monitor:* Michael Duster, Legal Services, (515) 281- 4800